* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 21.8.2007
Pronounced on : 27.8.2007

\+ W.P.(C) 3665/2007 & CM No.6907/2007

NISHA GOEL ..... Petitioner
Through:Ms. Nandini Sahni, Advocate.

versus

BHARAT VIDYAPEETH INST. & ORS. ..... Respondents
Through:Mr. Kailash Vasudev, Sr. Advocate with
Mr. Sanjay K. Shandilya, Advocate and
Mr. Satyajit Saha, Advocate.
Mr. Sandeep Sethi, Sr. Advocate.

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes

2. To be referred to the Reporter or not? yes

3. Whether the judgment should be reported in the Digest? yes

% Mr. Justice S. Ravindra Bhat:

1. The Petitioner invokes the writ jurisdiction of this court and claims a direction to allow her to appear in the third trimester exams to complete her Master in Business Administration (MBA) course.

2. The brief facts necessary to decide this present petition are that the Petitioner pursued her B.Sc (zoology) Hons. from the Indira Gandhi National

Open University ("IGNOU"); she appeared in the final examination in July 2006. She appeared in the B-MAT 2006 and GDPI conducted by the Respondent no.1 and secured 164th ranking. She was admitted in March 2006 in the two years MBA course/ programme (hereafter "the course").

3. The lectures/ classes were scheduled to commence from 3.7.2006. The petitioner could not submit her original documents as the B.Sc. results were delayed. A sum of Rs. 2,47,000/- was paid towards admission, out of which Rs.1,50,000/- was charged as the management quota fee. The Petitioner submitted all her documents to Respondent No.1 on 23.3.2007. The course is divided into six trimesters each of 13 weeks for teaching and examination purposes. Trimesters I, II, III together constitute Part –I of the course while trimesters IV, V, VI together constitute Part-II.

4. The Petitioner allegedly attended her classes regularly; she appeared in the first trimester exam and secured about 70% marks. She secured 65% marks in her second trimester exams. She avers about her inability to submit her original documents before 25.8.2006, as the results of IGNOU were delayed. The Respondents did not object in this regard and her name was not included in the list of students who had to submit the documents or complete other formalities till January 2007. The Petitioner submitted that on 10.1.2007 her name appeared in the list of students required to submit documents and complete formalities.

5. The petitioner alleges that she was not allowed to appear in the third trimester exams, held on 9th of May 2007, whereas she had already appeared for the examinations in subjects, held on the 17th of April 2007 and 19th of April 2007. It is averred that no reason or notice was given to her, preventing her from appearing in the examination. The Respondents had verbally stated that she would not be allowed to appear in her 3rd trimester exams. The Petitioner submitted that she had completed all the formalities as required by the college on 23.03.2007.

6. The petitioner had paid her 3rd trimester examination fees of Rs.1145/-, she was also asked to pay an additional sum of Rs.800/- as late fees for non deposit of documents on time. In these circumstances, she seeks the declaration that the respondents should be directed to permit her to complete the third triemester, and pursue the course further.

7. Learned Counsel for the Petitioner Ms. Nandini Sahani submitted that the eligibility conditions as fixed by respondent No.1 for the said course were:

(i) "A graduate with bachelor or Masters Degree from any discipline who has passed with minimum 45 marks in aggregate (40% in case of SC/ST candidates) from a recognized University.

Or

The candidates in the final year Degree (Bachelors or Masters) are also eligible to apply provided they complete their graduation requirements including practical examination, viva, and assignments on or before the day of

admission to the institute of their choice. However such candidates will have to produce marks statement of the qualifying examination at the time of counseling. Under no circumstances will an extension of deadline be made. The admission of student will however remain provisional until they produce the other certificates on or before August 25th 2006 failing which admission would automatically stands cancelled.

ii) The candidate should be an Indian National."

8. Counsel urged that the Petitioner had appeared in her B.Sc. exam (theory papers) in June, 2006 and later, her practicals. However, the result was declared in November, 2006 and due to internal problems in the said University the result of the practical papers got delayed till November, 2006. When the result was announced it was declared that the petitioner had cleared her B.Sc. (graduation) papers. Counsel contended that in another writ petition filed by one Inder Sunil Verma against the respondents this Court allowed the writ petitioner refund of his fees from the respondents and a direction was issued to them to reconsider the case of that writ petitioner for admission in the same academic year on the basis of the previous entrance test.

9. The learned counsel further argued that the respondents took the sum of Rs.2,47,000/- as fees from petitioner and after admitting her to the course as well as allowed her to attend classes till 15.04.2007. And later allowed her to appear in two examinations of her third trimester, in the month of April, 2007. The petitioner could thus not be punished for no fault of hers. It cannot be stated that she had misrepresented, played any fraud or

manipulated her admission. It was lastly submitted that the practical centre of the IGNOU had shut down; this fact was not intimated to the petitioner. As a result, she could not appear in the practical examinations of B.Sc; therefore, there was delay in her clearing the examinations. Counsel also submitted that just as in the case of Inder Sunil Vermal, the petitioner too should be given full refund, and permitted admission.

10. The learned counsel for the Respondent Institute relied upon the letter of Indira Gandhi National Open University that the petitioner did not qualify her B.Sc. degree course till December 2006 and was, therefore, ineligible to continue in the MBA course. That had commenced in July 2006; she had been admitted, on her statement that she was eligible. He further argued that on date when the session for academic year 2006-2007 commenced, the petitioner had not qualified and obtained graduate degree – B.Sc., with Zoology as a major subject from the concerned university and that she concealed these relevant facts from them. It was urged that sufficient time was granted to students who had not submitted proof of fulfilling eligibility conditions. Despite this, the petitioner was unable to furnish any material showing that she had fulfilled the eligibility criteria for admission, in July 2006, or at any reasonable time thereafter.

11. The Learned counsel contended that the petitioner obtained her

admission to the MBA course by concealing facts, making false representations and holding out that she had qualified at the B.Sc. degree course. Counsel placed reliance on a letter of the Indira Gandhi National Open University which stated that since the student did not appear in the practical's in three courses i.e. LSE- IIL, CHE – 7L and CHE-8L the statement of marks given to her in June 2006 did not show completion of the programme by the student in June 2006. The Petitioner appeared in practicals in the above three courses only after June 2006 and successfully completed them in the first attempt. Since the University conducts examinations twice a year i.e. in June and December, and the student completed all the requirements between June 2006 and December 2006, the University declared her having successfully completed B.Sc. in December 2006 and the Marks – sheet and provisional Certificate was accordingly later issued to her.

12. The eligibility condition of the respondent no.1 for the M.B.A course is that the candidates in the final year Degree (Bachelors or Masters) are also eligible to apply for the said course provided they complete their graduation requirements including practical examination, viva-voce and assignments on or before the day of admission to the institute of their choice. The Petitioner applied for a MBA course with Respondent no.1. On the date of her admission she had not completed her B.Sc degree. She had completed her theory papers

but not her practical examinations. The Petitioner did not submit her certificates on the date of admission; she appeared in the practicals only after June 2006. Her admission was made in the month of March 2006.

13. According to the requirements the petitioner had to complete the theory as well the practical examination before March 2006. The Petitioner did not reveal the truth in order to buy time from the Institute. The Respondent no.1 institute in spite of being aware that the Petitioner had not submitted her original certificates allowed her to appear in two trimester exams as well as two papers of the third trimester exam. It was only after these two examinations, that she was prevented from appearing in the later papers. It is evident that the Petitioner obtained admission in the Institute, without the basic eligibility criteria. During the course of hearing, after notice was issued to IGNOU, it was admitted that the petitioner appeared in the practical tests much later after June 2006; results were declared only in 2007.

14.The above facts would show that the petitioner did not fulfil the eligibility condition of having completed the B.Sc course and being entitled to a degree at the time of her admission to MBA. If the petitioner had cleared all her papers while applying and obtained admissions to the course, there would have been no difficulty. Mere submission of a certificate late, under compulsion of circumstances-particularly if the University or examining body had not issued it in time, would not have vitiated the

eligibility condition as she would have, in such case, been eligible. However, here the petitioner clearly did not possess the eligibility; she had not completed the practicals in time. Maybe, there was a difficulty, as claimed by her, that the examination centre had been closed down. But that did not relieve her obligation to make the necessary declaration, as she had not appeared in the practical papers when she was admitted to the course nor later, when she started attending classes. The correct position was explained in this regard by the Supreme Court in *Dolly Chhanda-vs- Chairman JEE* 2005 (9) SCC 779 in the following terms:

> *"The general rule is that* ***while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed.*** *This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature*."

(emphasis supplied)

The decision reported as *Preeti Srivastava (Dr.) v. State of M.P.* ((1999) 7 SCC 120) is an authority for the proposition that laying down of eligibility criteria and allied prescription of conditions are integrally connected with the standards of education.

15. The action of the Respondent no.1 in not allowing the Petitioner to give her exams cannot be faulted. However, it cannot absolve itself of the blame entirely, had it, within reasonable time, refused to further extend the time for approving admissions, or receiving the documents. Although this lapse cannot entitle the petitioner to a direction that she ought to be permitted to continue in the course - since that would be plainly against the rules, yet I am of the opinion that in the facts and attendant circumstances of the case, the most appropriate course, in order to balance the equities between the parties, would be to direct the first respondent to refund 75% of the entire amounts (including management quota fee) collected by it from the petitioner.

16. In view of the above findings, the petitioner is not entitled to a direction that she should be continued in the MBA course. However, a direction is given to the first respondent to refund 75% of the amounts paid by her towards tuition fees and all other amounts (including management

quota fee) collected from her, within six weeks from today. The petition is partly allowed, in these terms. No costs.

(S.RAVINDRA BHAT)

JUDGE

August 27th, 2007